**IN THE UNITED STATES DISTRICT COURT**
**FOR THE WESTERN DISTRICT OF TEXAS**
**AUSTIN DIVISION**

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| Sushma Aggarwal, | § | |
| | § | |
| *Plaintiff*, | § | |
| | § | |
| vs. | § | **Civil Action No. 1:17-cv-247** |
| | § | |
| Toyota Motor Corporation and | § | |
| Toyota Motor Engineering & | § | |
| Manufacturing North America, Inc., | § | |
| | § | |
| *Defendants*. | § | |

## PLAINTIFF'S COMPLAINT

**To the Honorable United States Judge of Said Court:**

COMES NOW, Sushma Aggarwal (hereinafter referred to as "Plaintiff"), and respectfully files this Complaint against Toyota Motor Corporation and Toyota Motor Engineering & Manufacturing North America, Inc. (hereinafter referred to as "Defendants"), and in support hereof would state and show the following:

## I. Parties

1. Plaintiff Sushma Aggarwal is an individual. She resides in and is a citizen of Hutto, Texas.

2. Defendant Toyota Motor Corporation is a foreign Corporation doing business in Texas, and service of process upon this Defendant may be had by serving its president, Akio Toyoda, at 1 Toyota-Cho, Toyota, 0471, Japan.

3. Defendant Toyota Motor Engineering & Manufacturing North America, Inc. is a foreign Corporation doing business in Texas, and service of process upon this Defendant may be had by serving its registered agent for service, CT Corporation System at 645 Lakeland East Drive, Suite 101, Fleetwood, Mississippi 39232.

## II. Jurisdiction

4. This Court has jurisdiction over the lawsuit under the provisions of 28 U.S.C. Section 1332.

5. The parties to this lawsuit are citizens of difference states, and the matter in controversy exceeds the sum or value of $75,000.00, exclusive of interest and costs.

## III. Facts

6. On or about October 29, 2016, Sushma Aggarwal was riding in a 2012 Toyota Camry (VIN# 4T1BF1FK7CU014833) traveling southbound on FM 685 in Travis County, Texas.

7. The subject vehicle was designed by Defendants.

8. The subject vehicle was manufactured by Defendants.

9. The subject vehicle was also assembled and tested by Defendants.

10. The subject vehicle was stopped due to traffic at a red light. Another vehicle, also traveling southbound on FM 685 struck the rear end of the subject vehicle Sushma Aggarwal was riding in.

11. At the time of the accident, Sushma Aggarwal was properly seated and properly wearing the available seat belt.

12. However, despite being properly seated and properly wearing the available seat belt, Sushma Aggarwal sustained serious injuries when the vehicle failed to protect her because it violated several crashworthiness principles.

13. There are five (5) recognized crashworthiness principles in the automobile industry/throughout the world. They are as follows:

a. Maintain survival space;

b. Provide proper restraint throughout the entire accident;

c. Prevent ejection;

d. Distribute and channel energy; and

e. Prevent post-crash fires.

14. When the National Highway Traffic Safety Administration (NHTSA) created the Federal Motor Vehicle Safety Standard (FMVSS) in the late 1960's, the preamble to the safety standards included the above definition of crashworthiness.

15. Crashworthiness safety systems in a vehicle must work together like links in a safety chain. If one link fails, the whole chain fails.

16. Vehicle manufactures have known for decades and have admitted under oath that there is a distinction between the cause of the accident versus the cause of an injury.

17. Indeed, vehicle manufacturers have known for decades that crashworthiness is the science of preventing or minimizing injuries or death following an accident through the use of a vehicle's various safety systems.

18. Lee Iacocca, former President of Ford Motor Company stated, while President and CEO of Chrysler, that "Every American has the right to a safe vehicle."

19. General Motors has stated in the past that, "The rich don't deserve to be safer…Isn't it time we realized safety is not just for the pampered and the privileged? Safety is for all."

20. Volvo has stated that it has a goal that no one is killed or injured in a Volvo vehicle by the year 2020. Volvo has also stated that, "Technologies for meeting the goal of zero injuries and fatalities are basically known today – it is a matter of how to apply, finance, distribute and activate."

21. Because every American has the right to a safe vehicle, because safety is for all, and because technologies for meeting the goal of zero injuries and fatalities are basically known today, it is incumbent upon auto manufacturers to investigate and find out what other automakers are doing with regards to safety and to apply those same methods or technology to their own vehicle.

22. Furthermore, an automaker cannot choose to use safer technology in Europe, Australia, Japan, or some other country and refuse or fail to offer that same safety technology to consumers in America.

23. While there are minimum performance standards which an automaker is supposed to meet before selling a vehicle in the United States (the FMVSS), these minimum performance standards to not adequately protect the public.

24. Indeed, Joan Claybrook, former administrator of the NHTSA, wrote a letter to major auto makers where she said, "Our federal safety standards are and were

intended to Congress to be minimum standards. The tragedy is that many manufacturers have treated the standards more like ceilings on safety performance rather than floors from which to improve safety."

25. Additionally, in September of 2014, a Congressional report was issued in response to the General Motors ignition switch recall. The report questioned whether NHTSA had the technical expertise, culture and analytic tools needed to address safety issues. The report stated, "NHTSA also lacked the focus and rigor expected of a federal safety regulator." It was also stated that NHTSA staff has a "lack of knowledge and awareness regarding the evolution of vehicle safety systems they regulate."

## IV. Cause(s) of Action as to Defendants

26. It was entirely foreseeable to and well-known by Defendants that accidents and incidents involving their vehicles, such as occurred herein, would on occasion take place during the normal and ordinary use of said vehicle.

27. The injuries complained of occurred because the vehicle in question was not reasonably crashworthy, and was not reasonably fit for unintended, but clearly foreseeable, accidents. The vehicle in question was unreasonably dangerous in the event it should be involved in an incident such as occurred herein.

28. Defendants, either alone or in conjunction with some other individual(s) and/or entity(ies), designed, manufactured, marketed, assembled, and/or tested said vehicle in question.

29. As detailed herein, the vehicle contains and/or Defendants have committed either design, manufacturing, marketing, assembling, and/or testing defects.

30. Defendants either knew or should have known of at least one safer alternative design which would have prevented the serious injuries to the Plaintiff.

31. In addition to the foregoing, Defendants, either alone or in conjunction with some other individual(s) and/or entity(ies), designed, manufactured, marketed, assembled, and/or tested said vehicle in question to be unreasonably dangerous and defective within the meaning of Section 402(A) Restatement (Second) Torts, in that the vehicle was unreasonably dangerous as designed, manufactured, assembled, marketed, and/or tested because Defendants knew and/or should have known of the following, non-exhaustive list of defects:

a. The vehicle's rear structure is weak and inferior;
b. The vehicle's rear seating area is like a trash compactor because of the weak rear structure;
c. The vehicle's weak rear structure collapse rendered the other safety systems ineffective;
d. The vehicle's rear structure frame rail needs to be a taller section;
e. The vehicle's rear structure needs a kick up from the bumper attachment point;
f. The vehicle's rear structure needs thicker gauged material;
g. The vehicle's rear structure material needs high strength material;
h. The vehicle's rear structure needs an upper load path that ties the rear bumper into the upper structure;
i. The vehicle's rear structure needs to use foam inside the structural components;
j. The vehicle's rear structure needs to eliminate the stress concentrations;
k. The vehicle fails to use the rear bumper and tires as a tire kicker;

l. The vehicle's rear structure violates principles of crashworthiness because the weak structure allows for the destruction of the occupant survival space;

m. The vehicle's side curtain airbag failed to contain a long duration canister in a side impact event;

n. The vehicle failed to provide proper restraint;

o. The vehicle violated principles of crashworthiness;

p. The vehicle's front seat performed as designed, however there are no warnings that Defendants told its users that seats were designed to collapse and put the user in the zone of danger;

q. The vehicle's front seat performed as designed, however the Defendants failed to advise or inform users of rear seated occupants of the risk, hazards and danger associated with a collapsing seat;

r. The Defendants failed to warn users of the rear seat that they were in the zone of danger because of the trash compactor effect;

s. The Defendants failed to test its vehicle with occupants in the rear seat in a high speed rear impact event;

t. The design and warning defects, as well as the negligence of the Defendants were the producing, proximate, direct and substantial factor in the serious brain injuries and damages.

32. Defendants failed to conduct proper testing and engineering analysis during the design, development and testing of the vehicle.

33. Defendants were negligent in the manufacture, assembly, marketing, and/or testing of the vehicle in question.

34. In designing a vehicle, efforts should be made by manufacturers to identify potential risks, hazards, and/or dangers that can lead to serious injury or death;

35. Once potential risks, hazards, and/or dangers are identified, then the potential risks, hazards, or dangers should be eliminated if possible.

36. If the potential risks, hazards, and/or dangers can't be eliminated, then they should be guarded against.

37. If the potential risks, hazards, and/or dangers can't be eliminated or guarded against, they should at least be warned about.

38. A company that does not conduct a proper engineering analysis that would help it to identify potential risks, hazards, and/or dangers that could seriously injure someone is negligent.

39. Based upon information and/or belief, Defendants either used or knew about advanced safety features used in Europe, Australia, Japan and some other country and chose not to offer those safety features to American consumers.

40. Defendants' occupant protection philosophy and design philosophy are utilized in various model vehicles, including ones sold overseas in other markets.

41. When Defendants designed the subject vehicle, it did not reinvent the wheel. Defendants used an enormous amount of human capital which had been acquired from numerous different engineers which had worked on many prior vehicle. This knowledge would have been utilized in different aspects of the various designs of the subject vehicle.

42. Defendants are currently in exclusive possession and control of all the technical materials and other documents regarding the design, manufacture, and testing of the vehicle in question. Defendants are also in possession of what, if any, engineering analysis it performed.

43. However, it is expected that after all of these materials are produced in discovery and/or after Defendants' employees and corporate representatives have been deposed, additional allegations may come to light.

44. Lastly, the materials from other models, years, and countries will provide evidence regarding what Defendants knew, when they knew it, and about what was utilized or not utilized as well as the reasons why.

45. The foregoing acts and/or omissions, design defects and negligence of Defendants were the producing, direct, proximate and legal cause of the Plaintiff's serious injuries and Plaintiff's damages.

## V. Damages to Plaintiff

46. As a result of the acts and/or omissions of Defendants, Sushma Aggarwal has endured pain and suffering, impairment, and disfigurement, interference with her daily activities and a reduced capacity to enjoy life as a result of her injuries.

47. As a result of the acts and/or omissions of Defendants, Sushma Aggarwal has become obligated to pay extensive medical expenses as a result of her injuries.

48. As a result of the act and/or omissions of Defendants, Sushma Aggarwal has suffered lost wages in the past and in all likelihood will into the future as result of her injuries.

49. The above and foregoing acts and/or omissions of the Defendants, resulting in the serious injuries to Sushma Aggarwal have caused actual damages to Plaintiff in excess of the minimum jurisdictional limits of this Court.

## VI. Prayer

50. For the reasons presented herein, Plaintiff prays that Defendants be cited to appear and answer, and that upon a final trial of this cause, Plaintiff recovers judgment against Defendants for:

a. actual damages;
b. prejudgment and post-judgment interest beginning October 29, 2016;
c. costs of suit; and
d. all other relief, general and special, to which Plaintiff is entitled to at law and/or in equity, and/or which the Court deems proper.

Respectfully submitted,

**The TRACY firm**

/s E. Todd Tracy

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